

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE JULIAN CHAVEZ,

Defendant and Appellant.

B271052

(Los Angeles County
Super. Ct. No. GA096555)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Jared Moses, Judge. Affirmed.

Ann-Marissa Cook, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Jose Julian Chavez was charged in an information with one count of burglary (Pen. Code, § 459) with a special allegation he had suffered one prior serious or violent felony conviction under the Three Strikes law (Pen. Code, § 667, subds. (b)-(j), 1170.12). Chavez pleaded not guilty and denied the special allegation.

According to the evidence presented at trial, Amy Wong owned the property located at 9092 Las Tunas Drive in Temple City in June 2015. The property contained two apartments, a laundry room solely for the apartment tenants, and a vacuum cleaner business detached from the apartments. Wong owned several items that were stored on the property for the tenants' use: A dust pan and trash can were kept inside the laundry room; and a hose, broom and hand dolly were kept outside, but near the laundry room. On direct examination, Wong viewed a photograph of these items taken by Los Angeles County Sheriff's Deputy Charles Guzak. Wong identified them as the items she owned and stored on the property for the tenants' use.

Access to the apartments was gained through a metal security or gated door, which stood next to the vacuum cleaner business. According to Wong, the tenants were supposed to lock the gated door, but she had discovered it unlocked on occasion. Prior to June 23, 2015, the knob of the gated door was not dented or otherwise damaged. Wong did not know Chavez and never gave him permission to enter the apartment area.

At approximately 1:00 a.m. on June 23, 2015, Deputy Charles Guzak responded to a reported burglary of the laundry room on Wong's property. As Guzak was traveling on Las Tunas Drive toward the property, he saw Chavez walking down the sidewalk 50 to 75 yards away from Wong's property. Chavez was wearing a hat, a white T-shirt and blue jeans. He was alone on the street, pushing a two-wheel hand dolly. On top of the dolly were a hose, broom, dust pan and hand auger. Guzak detained Chavez and photographed the dolly and the items on top. Shortly thereafter, Guzak examined the gated door leading to the apartments and noticed it was dented and damaged.

Patricia Aldana and her 17-year-old son Jerry Ramirez resided in one of the two apartments in June 2015. A window of their apartment faced the laundry room five feet away. Aldana testified that at approximately 1:00 a.m. on June 23, 2015, she heard a noise, looked out the window and saw a person

standing there. His back was towards Aldana; she could not see his face. He was wearing a white T-shirt and cap.

Ramirez testified he was awakened at approximately 1:00 a.m. by the sound of the gate door being slammed. He looked out the window and saw a person wearing a white shirt, hat with glasses on top, and blue jeans. The person was sitting inside the laundry room and appeared to be searching through it. Ramirez told his mother, and she called the police emergency operator.

At approximately 1:00 a.m. on June 23, 2015 Los Angeles Sheriff's Deputy Javier Gonzalez responded to the reported burglary and met Deputy Guzak, who had detained Chavez, who was wearing a white shirt. Gonzalez interviewed Aldana, who said she saw a male grab a hand dolly from a nearby wall before entering the laundry room and removing a plumbing snake. Gonzalez conducted a field show-up during which Aldana and Ramirez each identified Chavez as the person they saw in the laundry room that morning. Aldana testified she had identified Chavez based on the white T-shirt he was wearing and the items found in his possession when he was detained. Ramirez testified his identification of Chavez was based on the clothes Chavez was wearing at the time. In his report, Gonzalez wrote he had recovered a plumbing snake, auger, broom, hand dolly, dustpan and water hose from Chavez.

Aldana and Ramirez were unable to identify Chavez in court.

The trial court denied the defense motions for judgment of acquittal under Penal Code section 1118.1 and reduction of the felony offense to a misdemeanor under Penal Code sections 17, subdivision (b) and 1170.18.

Chavez did not testify in his defense of mistaken identity.

The jury convicted Chavez of burglary as charged. In a bifurcated proceeding the trial court found the prior conviction allegation true and sentenced Chavez to an aggregate state prison term of six years, consisting of the upper three-year term for first degree burglary doubled under the three strikes law. The court awarded Chavez 225 days of presentence custody credits and imposed statutory fines, fees and assessments.

Chavez filed a timely notice of appeal.

We appointed counsel to represent Chavez on appeal. After an examination of the record, counsel filed an opening brief in which no issues were raised. On August 3, 2016, we advised Chavez he had 30 days in which to personally submit any contentions or issues he wished us to consider. On August 18, 2016, we received a handwritten four-page supplemental brief in which Chavez argued there was insufficient evidence of his identity as the burglar and of the theft of items from inside the laundry room.

In considering a claim of insufficient evidence in a criminal case, “we review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] ‘Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]’ [Citation.] A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” the jury’s verdict.’ (*People v. Zamudio* (2008) 43 Cal.4th 327, 357; accord, *People v. Manibusan* (2013) 58 Cal.4th 40, 87.) It is the jury who is required to evaluate the basis of Aldana’s and Ramirez’s field show-up identification of Chavez and their explanation of their inability to identify him in court. (See *People v. Zamudio*, *supra*, 43 Cal.4th at p. 357.)

The crime of burglary is committed when a person enters any building with intent to commit larceny or any felony. (See Pen. Code § 459.) Substantial evidence supports Chavez’s conviction for burglary of the laundry room on Wong’s property. Chavez was detained by Deputy Guzak, shortly

after the burglary, alone on the street and within 75 yards of Wong's property. Among other items, Chavez was in possession of a dust pan belonging to Wong that was stored inside the laundry room. Aldana and Ramirez identified Chavez to the deputies as the person they saw inside the laundry room that morning. Aldana also testified to having seen Chavez remove a plumbing snake from the laundry room. The jury was permitted to, and reasonably could have, inferred from this evidence that Chavez committed the burglary.

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.